DIANA CHEE VUN HSAI

v.

CITIBANK BHD

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED APANDI ALI J
[ORIGINATING SUMMONS NO: D10(D7)-24-511-2008]
30 JUNE 2009

BANKING: *Banks and banking business - Banking regulations - Credit card guidelines issued by Bank Negara (Central Bank) - Whether such guidelines had the force of law - Whether such guidelines constituted subsidiary legislation - Whether bank could avoid or circumvent such guidelines - Whether failure to follow such guidelines constituted a criminal offence - Payment Systems Act 2003, ss. 57, 70*

BANKING: *Banks and banking business - Credit card - Credit card guidelines issued by Bank Negara (Central Bank) - Whether such guidelines had the force of law - Whether such guidelines constituted subsidiary legislation - Whether bank could avoid or circumvent such guidelines - Whether failure to follow such guidelines constituted a criminal offence - Payment Systems Act 2003, ss. 57, 70*

CONTRACT: *Agreement - Credit card agreement - Construction of - Whether such agreement could be construed in such a manner as to circumvent Bank Negara credit card guidelines*

The applicant was a holder of a credit card issued by the respondent (issuer). On 7 September 2009, the applicant discovered her credit card missing. She notified the respondent of the loss that same day and lodged a police report the following day. On 16 September 2008, the respondent informed the applicant that through the unauthorised use of her credit card on 6 September 2009, a sum of RM1,859.01 had been incurred. The respondent also informed the applicant that it was debiting her account for the said sum. The applicant argued that under the Bank Negara guidelines BNM/RH/GL-041-01 ('the guidelines'), a cardholder's liability for unauthorized transactions due to lost or stolen credit cards was limited to RM250. The respondent answered that it was relying on the terms and conditions of its credit card agreement, which *inter alia* imposed a duty on cardholders to: (i) notify the respondent of the loss of a credit card within an hour prior to an unauthorized use; (ii) act in good

A faith; and (iii) to exercise reasonable care and diligence to prevent the loss or theft or unauthorized use of the card. The applicant thus applied to the High Court for, *inter alia* declarations that: (a) the guidelines had the force of law; (b) the terms and conditions relied upon by the respondent were contrary to the Bank Negara
B guidelines and were hence illegal, void and contrary to public policy; (c) by acting on such terms and conditions contrary to the guidelines, the respondent was committing an offence punishable under s. 57 of the Payment Systems Act 2003. The respondent contended that the guidelines had been incorporated into its
C credit card agreement with modifications. According to the respondent, under the agreement, the RM250 limit was only in respect of transactions effected for a period of one hour prior to the reporting of the loss of a credit card. Thus, the applicant could still be charged for the RM1,859.01.

D

Held (allowing the application):

(1) There was not an *iota* of evidence to indicate that the applicant had acted fraudulently, or had failed to inform the
E respondent as soon as was reasonably practicable. In fact, the applicant had lodged a police report one day after discovering her credit card stolen. (para 8)

(2) The respondent's 'one hour prior to reporting of the loss of the card' clause was unreasonable, ridiculous and contrary to
F cl. 15.2 of the Bank Negara guidelines. In fact, RM250 was the maximum liability of a cardholder in respect of a lost or stolen card. Further, the onus of proving fraud or unreasonable delay to report the loss of a credit card was upon the issuer. The clause was also contrary to and
G inconsistent with another term of the credit card agreement that required a cardholder to report any loss of card immediately, followed by a written confirmation to the respondent not later than seven days from the loss. (paras 9, 10 & 11)

H

(3) In the instant case, the cardholder had complied with the reporting and confirmation of loss of her credit card. The respondent could not have the discretion, despite it being written in the credit card agreement, to circumvent the Bank
I Negara guidelines in order to limit its liability. The terms and conditions of the credit card agreement, as a contract, are to

be read, governed and construed in accordance with the laws of Malaysia, specifically in the instant case with the Payment Systems Act 2003. (paras 12 & 13)

(4) The Bank Negara guidelines were issued under the enabling provision of s. 70 of the Payment Systems Act 2003. The said guidelines constituted subsidiary legislation as defined under s. 3 of the Interpretation Acts 1948 and 1967. The penal provisions prescribed in the guidelines further fortified the position of the guidelines as having the force of law. *Affin Bank Bhd. v. Datuk Ahmad Zahid bin Hamidi* (refd). (paras 14, 15, 16, 17, 18 & 19)

Case(s) referred to:
Affin Bank Bhd v. Datuk Ahmad Zahid Hamidi [2005] 1 CLJ 521 ***(refd)***

Legislation referred to:
Banking and Financial Institutions Act 1989, s. 126
Interpretation Acts 1948 and 1967, s. 3
Payment Systems Act 2003, ss. 25, 26(1), 57, 70

For the applicant - Dato' Vijay Kumar; M/s Kumar Jaspal Quah & Aishah
For the respondent - Robin Lim; M/s Azhar & Wong

Reported by Andrew Christopher Simon

JUDGMENT

Mohamed Apandi Ali J:

[1] This matter is an application by the applicant by way of an originating summons. By consent, the original originating summons (encl. 1) was subsequently amended. The amended originating summons is as in encl. 11, where the applicant prays for:

(1) A declaration that the guidelines BNM/RH/GL-012-1 issued by Bank Negara pursuant to ss. 25 and 70 of the Payment Systems Act 2003 have the force of law;

(2) A declaration that the terms and conditions of respondent's credit card relied upon by the respondent to deduct a sum of RM1,859.01 from the applicant's account are contrary to the guidelines issued by Bank Negara Malaysia pursuant to s. 70 of the Payment Systems Act 2003 and are hence illegal, void and contrary to public policy;

A (3) A declaration that by acting and continuing to act upon terms and conditions, imposed by the respondent, which are contrary to the guidelines, the respondents are committing an offence punishable under s. 57 of the Payment Systems Act 2003;

B (4) That in the absence of proving fraud on the applicant's part and/or failure to notify the respondent promptly after discovery of applicant's loss of, respondent is not entitled to deduct any sum exceeding RM250 from the applicant's account pursuant C to the Bank Negara Malaysia guidelines;

(5) That ancillary relief be granted to the applicant in that; all charges contrary to the Bank Negara Malaysia guidelines, debited to the applicant's account be reversed forthwith;

D (6) Cost of this action be borne by the respondent; and

(7) Any other relief that this Honourable Court deems fit and just.

Facts Of The Case

E **[2]** The applicant, Diana Chee Vun Hsai, at all material times was a holder of a Mastercard credit card issued by the respondent, bearing number 5160-5610-0072-2286. The applicant was also a holder of another credit card issued by HSBC Bank Berhad. On 7 September 2008, the applicant was alerted of a F transaction using her credit card by HSBC Bank Berhad. Upon checking her purse, she realized that both of her credit cards were missing. She promptly notified the respondent of the loss on the same day, ie, on 7 September 2008 and lodged a police report *vide* Dang Wangi Report No. 31132/08 on the following day, G 8 September 2008.

[3] On 16 September 2008 the respondent informed the applicant that they are deducting a sum of RM1,859.01 being charges incurred by unauthorised used of her credit card on H 6 September 2008.

[4] On 14 October 2008, in response to the respondent's letter of 16 September 2008, the applicant's solicitors wrote to the respondent and reminded them of the limit of liability for a lost I credit card is RM250 as stated in Bank Negara guidelines BNM/RH/GL-041-01, namely under cls. 15.1; 15.2 and 15.3.

[5] The solicitors for the respondent replied that they are relying on the terms of the credit card agreement and in a letter dated 11 December 2008 stated their stand as follows:

> With regard to the particular items as referred by your client in the Bank Negara guidelines, please take note that our client did not disregard these guidelines but have incorporated in the said Agreement with some modifications. Our client imposes a duty on the cardholder to notify the loss one (1) hour prior to the unauthorized use and to provide proof of acting in good faith and exercising reasonable care and diligence to prevent such loss or theft or unauthorised use of the card before our client can exercise its discretion whether to resolve the liability or not. Such a clause is not in contravention of the Bank Negara guidelines.

[6] In view of the respondent's adamant stand, the applicant filed this originating summons in court.

Applying The Facts To The Law

[7] The relevant substantive law pertaining to this originating summons is the Payment Systems Act 2003 (Act 627) which came into force on 1 November 2003, *vide* notification, P.U(B) 308/2003.

[8] Upon perusal of the cause papers and the submissions filed herein, I make the following findings:

(1) The respondent, Citibank Berhad, is an operator or issuer of a designated payment system under the Payment Systems Act 2003;

(2) As can be found in the Preamble of the Act, the Central Bank of Malaysia also known as Bank Negara Malaysia, is "the authority responsible for promoting the reliable, efficient and smooth operation of the national payment and settlement systems and for ensuring that the national payment and settlement systems policy is directed to the advantage of Malaysia;

(3) Flowing from that authority and duty, the Bank Negara Malaysia is the approving authority to approve any person to issue a designated payment instrument (refer to s. 25 of the Act);

(4) As the approving authority, the Bank Negara Malaysia is given the powers to revoke any such approval. This is provided for by s. 26(1) which reads as follows:

> Revocation of approval
>
> 26(1) The Bank may revoke an approval granted under paragraph 25(1)(c) if it appears to the Bank that:
>
> (a) the issuer has contravened or is contravening any of the provisions of this Act;
>
> (b) the issuer has contravened any restrictions, limitations or conditions of the approval;
>
> (c) the issuer has failed to comply with any guidelines, circulars, standards or notices issued by the Bank under Section 70;
>
> (d) the issuer has made a false or an incorrect statement in the documents or information submitted under paragraph 25(1)(a) or particulars of any change to documents and information submitted under subsection 29(1);
>
> (e) the issuer has ceased issuing the designated payment instruments for any continuous period of six months; or
>
> (f) the issuer goes into liquidation or is wound up or is otherwise dissolved.

(5) This brings to focus the position of the guidelines by Bank Negara. The Bank Negara is empowered to issue the "guidelines" under the enabling provision of s. 70 of the Act which reads as follows:

> Power to issue guidelines, etc.
>
> 70. The Bank may, generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the operators of payment systems or issuers of payment instruments, issue such guidelines, circulars, standards or notices as the Bank may consider desirable.

(6) The guidelines that is the subject matter of this proceedings is known and identified as BNM/RH/GL-014-01. In order to appreciate the law and the issues in relation to this application, it is pertinent to reproduce the said guidelines in toto, which reads as follows:

Part A Overview 1
1. Introduction 1
2. Applicability 1
3. Interpretation 1
Part B Legal Provisions 3
4. Legal Provisions 3
Part C Policy Requirements 4
5. Minimum Age And Income Requirements 4
6. Placement Of Fixed Deposit 4
7. Prudent Lending 4
8. Terms And Conditions 5
9. Usage Of Credit Card For Unlawful Activities 5
10. Minimum Monthly Repayment 6
11. Statement On Minimum Monthly Repayment 6
12. Fees And Charges 6
13. Minimum Disclosure On Fees And Charges 7
14. Supplementary Cardholder's Liability 8
15. Liability For Lost Or Stolen Credit Card 8
16. Consumer Awareness And Education Programme 9
17. Suspension Of Interest On Non-performing Credit Card Loans And Provision For Bad And Doubtful Debts 10
18. Issuance Of Credit Cards To Directors 10
Part D Appointment Of Debt Collection Agencies 11
19. Appointment Of Debt Collection Agencies 11
Part E Appendices 12
Appendix 1 12
Appendix 2 13
Appendix 3 15
Appendix 4 16

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 1/17

Part A Overview

1. Introduction

1.1. The Credit Card Guidelines set out the minimum requirements on credit card operations which all issuers of credit cards in Malaysia are required to observe to ensure prudent lending practices through their credit card businesses. The issuers are encouraged to adopt more stringent measures in addition to the minimum requirements contained in these guidelines.

1.2. The Guidelines supersede all previous circulars on credit card operations as listed in Appendix 1.

1.3. The Guidelines came into force in June 2004.

2. Applicability

2.1. The Guidelines are applicable to all credit card issuers in Malaysia including licensed institutions.

2.2. Part D of these Guidelines is applicable only to issuers of credit cards which are licensed institutions.

3. Interpretation

3.1. In these Guidelines, unless the context otherwise requires:

3.1.1. Credit card means a payment instrument which indicates a line of credit or financing granted by the issuer to the user and where any amount of the credit utilised by the user has not been settled in full on or before a specified date the unsettled amount may be subject to interest, profit or other charges.

3.1.2. Issuer of credit cards means:

a. A licensed institution which issues credit cards; or

b. A person who has obtained Bank Negara Malaysia's approval to issue credit cards under Subsection 25(1) of the Payment Systems Act 2003; and

i. the line of credit is provided by a licensed institution; or

ii. has its own line of credit; or

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 2/17

iii. the issuance of the credit card is carried out through a joint venture arrangement with a licensed institution, hereinafter referred to as "non-financial institution".

3.1.3. Licensed institution for the purpose of these guidelines means any person licensed under Subsection 6(4) of the Banking and Financial Institutions Act 1989 (BAFIA) to carry on banking business, banking and finance company business, finance company and merchant banking business.

Part B Legal Provisions

4. Legal Provisions

4.1. The Guidelines are issued pursuant to Sections 25 and 70 of the Payment Systems Act 2003. Any person who fails to comply with the Guidelines may be guilty of an offence punishable under Section 57 of the Payment Systems Act 2003.

Part C Policy Requirements

5. Minimum Age And Income Requirements

5.1. An issuer of credit cards shall only issue credit cards to an applicant, as a principal cardholder, who is at least 21 years old and earning a minimum income of RM18,000 per annum[1].

6. Placement Of Fixed Deposit

6.1. For an applicant who meets the minimum age requirement under paragraph 5.1 but is unable to prove his annual income, the issuer of credit cards shall require the applicant to place a fixed deposit of an amount equivalent to the approved credit limit to be granted to such applicant[2].

6.2. An issuer of credit cards which is a non-licensed institution shall ensure that the applicant referred to in paragraph 6.1 place the fixed deposit with the licensed institution that is providing the line of credit or that is the joint venture partner of the issuer, as the case may be.

1. Such requirements were previously stated in the circulars dated 24 December 1991 and 28 July 1999 listed in Appendix 1.

2. Such requirement was previously stated in the circular dated 21 January 1995 listed in Appendix 1.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 3/17

7. Prudent Lending

7.1. An issuer of credit cards shall have an internal credit assessment policy for purposes of conducting a proper credit scoring exercise in approving or declining credit card applications and in determining an appropriate credit limit for each approved individual applicant.

7.2. An issuer of credit cards that is authorised to access the Central Credit Reference Information System (CCRIS) shall utilise the CCRIS and other sources of credit information for the purpose of verifying the applicant's credit worthiness to facilitate the credit assessment process.

7.3. An issuer of credit cards that is not authorised to access the CCRIS may, in addition to its internal credit assessment policy, rely on the licensed institution which is providing the line of credit or which is the joint venture partner of the issuer, as the case may be, for the purpose of verifying the applicant's credit worthiness to facilitate the credit assessment process.

8. Terms And Conditions

8.1. An issuer of credit cards shall specify in the terms and conditions the significant liabilities and obligations applicable to the principal and supplementary cardholders in bold print in its application brochures and web pages. Such terms and conditions should be described in plain language, which is easily understood by the applicants.

8.2. An issuer of credit cards shall ensure that its customer service staff are able to answer queries on the credit card terms and conditions. The hotlines for the customer service shall be published in the brochures, monthly billing statements and web pages.

9. Usage Of Credit Card For Unlawful Activities

9.1. An issuer of credit cards shall include in the terms and conditions under paragraph 8.1 a term specifying that the credit cards are not to be used for any unlawful activities such as illegal online betting. An issuer of credit cards shall immediately terminate the credit card facility if the cardholder is found to have used the credit card for an unlawful activity.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 4/17

10. Minimum Monthly Repayment

10.1. An issuer of credit cards shall require their cardholders to make a minimum monthly repayment amount of 5% of the total outstanding balance[3].

11. Statement On Minimum Monthly Repayment

11.1. An issuer of credit cards shall provide a statement, in the form as set out in Appendix 2, on the front page of the monthly billing statement advising the cardholder on the consequences of paying only the minimum monthly repayment amount each month.

12.1. An issuer of credit cards shall provide the statement under paragraph 11.1 in Bahasa Malaysia if the monthly billing statement is published in a single language and in both Bahasa Malaysia and English if such statement is published in two languages.

12. Fees And Charges

12.1. An issuer of credit cards, in imposing late payment charges and finance charges on their cardholders is subject to the following:

a. A late payment charge may be imposed up to a maximum of 1% of the monthly repayment amount due or RM5, whichever is higher, if the cardholder fails to make the minimum monthly repayment by the due date[4]; and

b. A finance charge may be imposed up to a maximum of 1.5% per month which is equivalent to 18% per annum of the total outstanding balance[5].

12.2. All retail transactions (as opposed to cash advance transactions) charged to a credit card shall be allowed an interest free period of at least 20 days from the posting date of such transaction, regardless of the total outstanding balance in the credit card account. In this

3. Such requirement was previously stated in the circulars dated 24 December 1991, 7 November 1995, 2 January 1996, 11 September 1998 and 20 November 1998 listed in Appendix 1.

4. Such requirement was previously stated in the circular dated 30 December 1998 listed in Appendix 1.

5. Such requirement was previously stated in the circular dated 30 December 1998 listed in Appendix 1.

regard, the finance charge (interest) shall only be charged on the balance that remains outstanding in the account from the preceding monthly billing statement date, which shall be calculated on a daily basis. In other words, all retail transactions posted to the account after the previous statement date shall not be included in the total outstanding balance for the purpose of computing the finance charges. Finance charges shall not be clawed back to the date when the transaction has been posted to the cardholder's account and shall only be computed commencing from the due date following the interest free period[6].

13. Minimum Disclosure On Fees And Charges

13.1. An issuer of credit cards shall specify the credit card fees and charges in a manner that can be easily understood by the applicant, using concise language and in a standard table as provided in Appendix 3.

13.2. An issuer of credit cards shall ensure that the Fees and Charges Table is displayed prominently on the credit card application forms including electronic application forms, preferably on the same page of such forms. If otherwise, a conspicuous reference to the disclosure shall be indicated in the application forms. In the case of electronic application forms, the issuer of credit cards shall ensure that the Fees and Charges Table is brought to the notice of the applicant in such manner that the applicant cannot bypass such Fees and Charges Table before the applicant submits his credit card application.

13.3. An issuer of credit cards shall print on the front page of the monthly billing statement to cardholders, information on the various charges (including finance charges) imposed on the outstanding balances and the method of computation of such charges. Where there are space constraints, an issuer of credit cards shall disclose the information prominently at the back of the monthly billing statement and a conspicuous reference to the disclosure shall be indicated on the front page of the monthly billing statement. The effective interest rate charged on

6. Such requirement was previously stated in the circular dated 7 November 1995 listed in Appendix 1.

credit card accounts shall be printed on the basis of 'per annum'. The issuer of credit cards is allowed to also print the interest rate on a daily or monthly basis in addition to the 'per annum' basis[7].

14. Supplementary Cardholder's Liability

14.1. An issuer of credit cards shall not hold the supplementary cardholder jointly or severally liable for the debts of the principal cardholder or other supplementary cardholders.

15. Liability For Lost Or Stolen Credit Cards

15.1. An issuer of credit cards shall provide effective and convenient means by which a cardholder can notify any lost, stolen or unauthorised use of his credit card and shall provide procedures for acknowledging receipt and verification of the notification for the lost, stolen or unauthorized use of credit card.

15.2. The cardholder's maximum liability for unauthorised transactions as a consequence of a lost or stolen credit card shall be confined to a limit specified by the issuer of credit cards, which shall not exceed RM250, provided the cardholder has not acted fraudulently or has not failed to inform the issuer of credit cards as soon as reasonably practicable after having found that his credit card is lost or stolen.

15.3. Where the amount imposed on the cardholder for unauthorized transactions due to lost or stolen credit cards is in excess of the maximum liability limit, the issuer of credit cards has to prove that the cardholder has acted fraudulently or failed to inform the issuer of credit cards as soon as reasonably practicable after having found that his credit card is lost or stolen.

15.4. An issuer of credit cards shall ensure that the cardholder shall not be held liable for any unauthorised transaction charged to the credit cards after the cardholder has notified the issuer of credit cards verbally or in writing, that his credit cards are lost or stolen. An issuer of credit cards shall take immediate action upon notification by the cardholder, to prevent further use of the lost or stolen credit card.

7. Such requirement was previously stated in the circulars dated 7 November 1995 and 2 January 1996 listed in Appendix 1.

15.5. An issuer of credit cards shall notify the cardholder in the monthly billing statements of the cardholder's potential liability for unauthorized transactions if he has acted fraudulently or has failed to inform the issuer of credit cards as soon as reasonably practicable upon discovery that his credit card has been lost or stolen.

16. Consumer Awareness And Education Programme

16.1 An issuer of credit cards shall conduct a consumer awareness and education programme on a continuing basis which shall include:

a. Advice on "comparison shopping" for credit cards;

b. Advice on prudent use of credit cards;

c. Consequences of paying only the minimum monthly repayment amount;

d. Advice on fraud prevention measures; and

e. Potential liability for lost or stolen credit cards.

17. Suspension Of Interest On Non-performing Credit Card Loans And Provision For Bad And Doubtful Debts

17.1 An issuer of credit cards which is a licensed institution shall comply with the "Guidelines on the Suspension of Interest on Non-Performing Loans and Provision for Bad and Doubtful Debts" issued by Bank Negara Malaysia, which may be revised from time to time.

17.2 An issuer of credit cards which is a non-licensed institution shall ensure that the suspension of interest on non-performing credit card loans and provision for bad and doubtful debts comply with the requirements as specified in Appendix 4.

18. Issuance Of Credit Cards To Directors

18.1 Pursuant to Subsection 62(1) of the BAFIA, exemption is given to licensed institutions to issue credit cards to their directors, provided that the licensed institutions ensure that the credit card shall be utilized as a charge card[8].

8. Such requirement was previously stated in the circular dated 18 July 1996 listed in Appendix 1.

18.2 An issuer of credit cards which is a non-licensed institution shall ensure that the credit cards issued to their directors shall be utilised as a charge card.

18.3 An issuer of credit cards shall ensure that all transactions charged to the credit cards issued under paragraph 18.1 and 18.2 above are settled by the cardholders before or on the payment due date and the cardholders are not allowed to have any outstanding balances in their credit card accounts after the payment due date.

Part D Appointment Of Debt Collection Agencies

19. Appointment Of Debt Collection Agencies

19.1 An issuer of credit cards which is a licensed institution may outsource the debt collection functions with regard to its credit card receivables in accordance with the circulars entitled 'Appointment of Debt Collection Agencies by Banking Institutions' dated 22 May 2000 and 'Outsourcing of Banking Operations' dated 14 April 2000 issued by Bank Negara Malaysia, which may be revised from time to time.

Part E Appendices

Appendix 1

Appendix 1 – Revoked/Superseded Circulars

No.	Circular	Issue Date
1	Guidelines on Credit Card Operations	24 December 1991
2	Credit Card with Line-of-Credit to Fixed Depositors (Ref: 2201/808/26/3/HY/SAH/MAH)	21 January 1995
3	Guidelines on Credit Card Operations (Ref: 2201/808/26/3/HY/SAH/MAH)	7 November 1995
4	Guidelines on Credit Card Operations (Ref: 2201/808/26/3/HY/SAH/MAH)	2 January 1996
5	Issuance of Credit Cards to Directors (Ref: 2201/808/26/3/RMI/SAH)	18 July 1996
6	Bayaran Minimum Bulanan Bagi Kad Kredit (Ref: JSP/POL/4110/CF/JM)	11 September 1998
7	Bayaran Minimum Bulanan Bagi Kad Kredit	20 November 1998
8	Garis panduan Mengenai Operasi Kad Kredit	30 December 1998
9	Minimum Income for Credit Cards (Ref: JSP/POL/4109/5)	28 July 1999
10	Credit Card Guideline (version 1.6)	18 March 2003
11	Credit Card Guideline (version 1.1)	10 October 2003

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 10/17

Appendix 2

Appendix 2 – Statement on Minimum Monthly Repayment

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:

Jumlah faedah yang harus dibayar dan tempoh yang diambil untuk menjelaskan keseluruhan baki belum jelas anda akan bertambah jika anda hanya membayar bayaran minimum bulanan. Berikut adalah gambaran jumlah faedah yang dikenakan dan tempoh pembayaran balik, bagi senario-senario baki belum jelas yang berbeza jika anda hanya membayar bayaran minimum secara berterusan. Pengiraan adalah berdasarkan 5% bayaran minimum atau RM__*, yang mana lebih tinggi, pada caj kewangan sebanyak___*% setahun.

Notice on Paying Only.Minimum Monthly Repayment:

The amount of interest you have to pay and the time it takes to repay your balance in full will increase if only the minimum monthly payment is made. The following table illustrates the amount of interest incurred and the repayment period, under different outstanding amount scenarios if you continue to pay only the minimum amount. The computations are based on 5% minimum payment or RM __*, whichever is higher, at a finance charge of __*% p.a.

	Contoh bagi senario-senario baki belum jelas yang berbeza/ Examples under different outstanding amout scenarios					
Baki belum jelas/ Outstanding balance (RM)	500	1,000	1,500	2,000	5,000	10,000
Tempoh pembayaran balik/ Repayment period (bulan/months)	*	*	*	*	*	*
Jumlah faedah yang dikenakan/ Total interest incurred (RM)	*	*	*	*	*	*

Note: * Figures to be provided by the issuer of credit cards, based on their rates and charges.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 11/17

Where there are space constraints, an issuer of credit cards is allowed to disclose part of the statement on the front page of the monthly billing statement, and to disclose the remainder of the statement at the back of the monthly billing statement with a clear reference made to it, as follows:

Front Page of Monthly Billing Statements

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:

Jumlah faedah yang harus dibayar dan tempoh yang diambil untuk menjelaskan keseluruhan baki belum jelas anda akan bertambah jika anda hanya membayar bayaran minimum bulanan. Sila rujuk kepada perkara__di muka surat belakang untuk maklumat lanjut.

Notice on Paying Only Minimum Monthly Repayment:

The amount of interest you have to pay and the time it takes to repay your balance in full will increase if only the minimum monthly payment is made. Please refer to item__at the back page for details.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 12/17

Back Page of Monthly Billing Statement

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:

Berikut adalah gambaran jumlah faedah yang dikenakan dan tempoh pembayaran balik, bagi senario-senario baki belum jelas yang berbeza jika anda hanya membayar bayaran minimum secara berterusan. Pengiraan adalah berdasarkan 5% bayaran minimum atau RM__* yang mana lebih tinggi, pada caj kewangan sebanyak___*% setahun.

Notice on Paying Only Minimum Monthly Repayment:

The following table illustrates the amount of interest incurred and the repayment period, under different outstanding amount scenarios if you continue to pay only the minimum amount. The computations are based on 5% minimum payment or RM_*, whichever is higher, at a finance charge of___* % p.a.

	Contoh bagi senario-senario baki belum jelas yang berbeza/ Examples under different outstanding amout scenarios					
Baki belum jelas/ Outstanding balance (RM)	500	1,000	1,500	2,000	5,000	10,000
Tempoh pembayaran balik/ Repayment period (bulan/months)	*	*	*	*	*	*
Jumlah faedah yang dikenakan/ Total interest incurred (RM)	*	*	*	*	*	*

Note: * Figures to be provided by the issuers of credit cards, based on their rates and charges.

Appendix 3

Appendix 3 – Fees and Charges Table

An issuer of credit cards shall adopt the following Fees and Charges Table which shall be printed using a minimum of 8-font size (the table is shown in an 8-font size):

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 13/17

Fees and charges*

a) Annual fee:
i) Principal
ii) Supplementary

The annual fees are:

Card Type	Visa (RM)		MasterCard (RM)		Others (RM)	
	Principal	Suppl.	Principal	Suppl.	Principal	Suppl.
Classic/ Standard						
Gold						
Platinum/ Premier						

b) Joining fee

The fees are:
i) Supplementary RM_ iii) Gold RM_
ii) Classic/Standard RM_ iv) Platinum/Premier RM_

c) Finance charges:
i) Purchase
ii) Cash advance
iii) Balance transfer

The charges are:
i) _% p.a. of the outstanding amount calculated on a daily basis
ii) _% p.a. of the cash advance amount calculated on a daily basis
iii) _ % p.a. of the amount transferred calculated on a daily basis

d) Cash advance fees

Advance fee is _ % of the amount advanced or a minimum of RM_, whichever is higher. This is imposed for each cash advance transaction.

e) Minimum monthly repayment

5% of the outstanding balance or a minimum of RM_.

f) Late payment charge

The late payment charge is _% of the minimum repayment amount due or a minimum of RM5, whichever is higher. *[To include other related charges, if any]*

g) Interest free period

_days from the date of the monthly billing statement and only applicable for purchase transactions.

h) Conversion for overseas transaction

The conversion rate as determined by Visa International or MasterCard International plus administration cost of _%

Note: For promotional offers, an issuer of credit cards is required to mention the duration of the promotion period, that is start and end date, and the conditions that apply, if any.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 14/17

Appendix 4

Appendix 4 - Suspension of Interest on Non-Performing Credit Card Loans and Provision for Bad and Doubtful Debts

Introduction

1. The objective of the requirement is to establish minimum standards on the classification of non-performing credit card loans and provision for bad and doubtful debts, income recognition and loss provisioning by issuers of credit cards which are non-licensed institutions so that there is a realistic valuation of loan assets and prudent recognition of income.

Classification of Non-Performing Credit Card Loans

Classification of credit card accounts as non-performing credit card loans

2. A credit card account is classified as a non-performing loan when the cardholder fails to settle his minimum monthly repayments for 3 months or more from the first day of default. This is illustrated as follows:

Months from first day of default

1st 2nd 3rd

↓ ↓ ↓

↑

31/1 28/2 31/3 30/4

1st repayment due but not paid — classify as NPL

Treatment of partial repayments of credit card loans

3. For purposes of ascertaining the period in arrears, each minimum monthly repayment must be made in full. If the cardholder settles his minimum monthly repayment partially, the repayment is still deemed to be in arrears.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 15/17

Treatment of interest and penalty interest on non-performing credit card loans

4. All interest accrued from the date the credit card account is classified as non-performing shall forthwith be suspended and credited into the "interest-in-suspense" account. Interest suspended should be credited to the "interest-in-suspense" account and reflected in the accounts of the issuer of credit cards. Memorandum entry is permitted only when the credit card account has been fully or partially written-off.

5. An issuer of credit cards is required to claw-back interest to the first day of default. In this regard, interest accrued and recognized as income prior to the date the credit card account is classified as non-performing must be reversed out of income. Suspension of interest on a non-performing credit card account will commence from the date the credit card account is classified as non-performing. Subsequently, interest earned on a non-performing credit card account will be recognized as income on a cash basis that is only when the interest is received by the issuer of credit cards.

6. Penalty interest should be treated in the same manner as normal interest. Similarly, penalty interest should be recorded in the books of credit card accounts and not maintained as a memorandum entry.

Reclassification of non-performing credit card loans as performing

7. A non-performing credit card loan can be reclassified as performing once total installment in arrears falls below 3 months. For example, if a credit card loan is 4 months in arrears and the cardholder pays 2 monthly installments, the non-performing credit card loan can be reclassified as performing as the total period in arrears is below 3 months. When the credit card loan is reclassified as performing, interest can be recognized as income on an accrual basis. If the loan remains at all times below 3 months in arrears, the loan can be classified as performing and interest income can be recognized or accrued accordingly.

Provisions for Bad and Doubtful Debts

8. An issuer of credit cards is required to review the adequacy of the general and specific provisions for bad and doubtful debts at all times to ensure that the provisions set aside are reflective of their potential losses.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 16/17

9. In respect of specific provisions, an issuer of credit cards is required to observe the following minimum parameters:

Period of Default	**Classification**	**Minimum specific provision over the amount outstanding, net of unearned interest and interest suspended**
3 months but less than 6 months	Doubtful	50% provisioning
6 months and above	Bad	100% provisioning

10. Notwithstanding the above, an issuer of credit cards should be further guided by the general principles enumerated below for purposes of determining the level of provisioning required:

(i) **Doubtful accounts**

Credit facilities or a portion thereof where collection in full is **improbable** and there is a high risk of **ultimate default.**

(ii) **Bad accounts**

Credit facilities or a portion thereof which are deemed **uncollectible and worthless,** on the basis of relevant circumstances.

Other issues

Issuing of new credit cards for a non-performing credit card account

11. Where an issuer of credit cards issues a credit card and the account of the credit card subsequently is classified non-performing, the same issuer of credit cards or other institutions in the same group, as the case may be, is not allowed to issue a new credit card to the defaulting cardholder to settle the arrears.

BNM/RH/GL 014-1	Payment Systems Policy Department	Credit Card Guidelines	Page 17/17

Write-off on non-performing credit card loans

12. Credit card accounts or portions thereof which are classified as bad or deemed uncollectible and worthless should be written-off. To ensure that the health of the issuer of credit cards is not distorted by writing-off the credit card accounts which are deemed still collectible as a guise to suppress the true level of non-performing credit card loans and interest-in-suspense, it shall be the management's responsibility to ensure that prudent and proper monitoring of credit card accounts is enforced.

13. Before a credit card account can be written-off, the issuer of credit cards should seek the approval of the Board of Directors or the management committee, as the case may be.

Write-back of specific provision

14. Write-back of specific provision is permitted under the following circumstances:

(i) where the credit card account has been fully settled;

(ii) where there is cash inflow; or

(iii) where there is concrete evidence to support a reclassification of the credit card account to a better category.

Minimum requirement

15. Issuers of credit cards may adopt more stringent measures in addition to the minimum requirements mentioned in Appendix 4.

(7) The relevant clause in the guidelines is obviously cl. 15 under the heading:

> 15. Liability For Lost Or Stolen Credit Card; and in particular clause 15.2, which reads as follows:
>
> 15.2 The cardholder's maximum liability for unauthorized transactions as a consequence of a lost or stolen credit card shall be confined to a limit specified by the issuer of credit cards, which shall not exceed RM250, provided the cardholder has not acted fraudulently or has not failed to inform the issuer of credit card as soon as reasonably practicable after having found that his credit card is lost or stolen.

(8) On evidence adduced, there is not an *iota* of evidence to indicate that the applicant, Diana Chee Vun Hsai, who had lost her credit card has acted fraudulently or has failed to inform the respondent, as the issuer of the credit card as soon as reasonably practicable. This can be seen in her police report that was made one day after discovering that her credit card was stolen.

[9] The respondent contended that the applicant can still be charged for any transaction after the credit card has gone missing because under the terms and conditions of the credit card, it was stated that the limit of liability of RM250 is only for any transaction effected for a period of one hour prior to the reporting of the loss of the card. This "one hour prior to reporting of the loss card" clause, to my mind is not only unreasonable and ridiculous but it is contrary to the provisions of cl. 15.2 of the Bank Negara Guidelines.

[10] In fact, the RM250 is the maximum liability of the cardholder in such circumstances, and that the onus of proving fraud or unreasonable delay to report loss of the card is upon the issuer of the credit card.

[11] Furthermore, the limit of "transactions effected for a period of one hour prior to the reporting of the loss" is clearly at tangent and in paradox to another term of the agreement which stipulates that the cardholder is to report any loss of the card immediately and to be followed by a written confirmation to the respondent, no later than seven days of the occurrence of the event.

[12] The cardholder has complied with the said terms of reporting and confirming the loss of the credit card. The respondent cannot have the discretion, despite having it so written in the agreement, to circumvent the Bank Negara guidelines, with a view to limit its liability.

[13] It must be reminded that the terms and conditions of the Credit Card Agreement, as a contract, are deemed to be read, governed and construed in accordance with the laws of Malaysia, and in this case, the Payment Systems Act 2003.

The Guidelines Has Force Of Law

[14] The Bank Negara Credit Card Guidelines BNM/RH/GL 1014-1, as stated earlier was issued under the enabling provision of s. 70 of the Payments Systems Act 2003. I am of the opinion that the said guidelines are piece of subsidiary legislation. "Subsidiary legislation" is defined under s. 3 of the Interpretation Acts 1948 and 1967 as;

> Any proclamation by law, rule, regulation, order, notification, by law or other instrument made under any Act, Enactment, Ordinance or other lawful authority and having legislative effect.

[15] The Bank Negara Guidelines comes under the category of "other instrument" and is therefore a subsidiary legislation, having legislative effect and force of law. To quote Shakespeare in Romeo and Juliet, Juliet said, "what's in a name? That which we call a rose by any other name, would smell just as sweet."

[16] A *fortiori*, in the Guidelines itself, it is specifically stated in cl. 4.1 that "Any person who fails to comply with the Guidelines may be guilty of an offence punishable under s. 57 of the Payment Systems Act 2003. Section 57 of the Act reads as follows:

> **General Penalty**
>
> 57. Any person who fails to comply with or contravenes any requirement or prohibition imposed upon him by any of the provisions of this Act or any specification or requirement made, or any order, directive or notice given, or any limit, term, condition or restriction imposed in the exercised in the exercise of any power conferred under, pursuant to, or by virtue of any of the provisions of this Act not specified in the Schedule, commits an offence under such provision, and if no penalty is expressly provided for the offence in this Act, shall on conviction be liable

to a fine not exceeding five hundred thousand ringgit, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding one thousand ringgit for every day during which the offence continues.

[17] In addition to that penalty, the issuer of the credit card is also liable to have its approval revoked by Bank Negara if the issuer has failed to comply with any of the Guidelines issued by Bank Negara. This, as explained earlier, is provided for under s. 26(1) of the Payment Systems Act 2003.

[18] The above said penal provisions against the issuer of the credit card further fortified the position of the Bank Negara Guidelines as having the force of law.

[19] It is worthy to note that, the learned judge in the case of *Affin Bank Bhd. v. Datuk Ahmad Zahid Hamidi* [2005] 1 CLJ 521 also concluded that the Bank Negara Malaysia guidelines issued pursuant to s. 126 of the Banking and Financial Institutions Act 1989 (BAFIA) do have the force of law.

Conclusion

[20] Applying the law to the facts of the case, I conclude that the Respondent has contravened the law and public policy as enunciated in the Payment Systems Act 2003, which is to be read together with the Bank Negara Credit Card Guidelines. Wherefore, I have no hesitation to allow and grant order in terms of the application in this originating summons as per encl. 11.